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12 HEALTH FEATHER RIVER

13 **UNITED STATES BANKRUPTCY COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN FRANCISCO DIVISION**

16 In re:
17 PG&E CORPORATION,
18 - and -
19 PACIFIC GAS AND ELECTRIC COMPANY
20 Debtors.

Case No. 19 - 30088 (DM)

Chapter 11
(Lead Case)
(Jointly Administered)

**RESERVATION OF RIGHTS RE:
REQUEST FOR HEARING ON
APPLICATIONS OF THE OFFICIAL
COMMITTEE OF TORT CLAIMANTS
PURSUANT TO 11 U.S.C. § 1103 AND
FED. R. BANKR. P. 2014 AND 5002 TO
RETAIN AND EMPLOY HON. JOHN K.
TROTTER (RET.) AS TRUSTEE AND
CATHY YANNI AS CLAIMS
ADMINISTRATOR *NUNC PRO TUNC* TO
JANUARY 13, 2020 THROUGH THE
EFFECTIVE DATE OF THE
RESOLUTION TRUST AGREEMENT
[ECF Nos. 5723, 5726 and 6486]**

- 24 ☐ Affects PG&E Corporation
25 ☐ Affects Pacific Gas and Electric
26 ☒ Affects both Debtors

27 ** All papers shall be filed in the Lead Case,
28 No. 19-30088 (DM).*

Hearing Date and Time:

Date: April 7, 2020
Time: 10:00 a.m. (Pacific Time)
Place: Courtroom 17
450 Golden Gate Ave., 16th Floor
San Francisco, CA 94102

1 Creditors Adventist Health System/West, a California religious non-profit corporation
2 (“Adventist Health”), and Feather River Hospital, a California religious non-profit corporation,
3 d/b/a Adventist Health Feather River (“AHFR” and, collectively with Adventist Health, the
4 “Adventist Claimants”), submit this Reservation of Rights in response to the *Request for*
5 *Hearings On Applications of the Official Committee of Tort Claimants (“TCC”) to Retain and*
6 *Employee Hon. John K. Trotter (Ret.) as Trustee and Cathy Yanni as Claims Administrator Nunc*
7 *Pro Tunc to January 13, 2020 Through the Effective Date of the Resolution Trust Agreement* (the
8 “Request for Hearing”) [ECF No. 6486].

9 Background

10 Adventist Health is a faith-based, nonprofit integrated health delivery system
11 headquartered in Roseville, California. AHFR is part of the Adventist Health hospital system.
12 Before the Camp Fire, AHFR was a 100-bed acute care, community hospital with extensive
13 operations in Butte County, but primarily in Paradise, California. The hospital was staffed by
14 nearly 200 physicians and advance practice professionals, approximately 1,200 employees and
15 more than 400 volunteers. It was the largest business and the largest employer in Paradise.

16 AHFR was devastated by the Camp Fire. The fire swept over large portions of its main
17 hospital campus in Paradise (the “Main Hospital Campus”), destroying the lower level of the
18 hospital and 15 other hospital buildings, as well as valuable medical equipment, furniture,
19 medicines and inventory inside those buildings. It also seriously damaged the upper level of the
20 hospital, its contents, and nine other buildings and their contents, the Feather River Health Center
21 (located outside of the Main Hospital Campus and once one of the largest rural health clinics in
22 Adventist Health’s system) and pharmacy, medical office building space, and three leased
23 locations (including valuable medical equipment, furniture, medicines and inventory at those
24 locations). Vehicles, landscaping, service roads, parking lots and walkways throughout the Main
25 Hospital Campus, and acres of woodland adjacent to the Main Hospital Campus, were destroyed
26 or seriously damaged. The Main Hospital Campus has been incapable of operation since the
27 Camp Fire, and nearly all other services provided on the Main Hospital Campus remain closed.
28 The Feather River Health Center has reopened, but offers only limited services. It cannot handle

1 patients with emergencies or other acute care needs, and must send them out of town to other
2 facilities.

3 The Adventist Claimants have incurred (and continue to incur) staggering financial losses
4 from the extensive damage to their real and personal property, including the loss of business
5 operations at the Main Hospital Campus and each of AHFR's other locations, which has had a
6 direct impact on the entire Adventist Health system. The Adventist Claimants timely filed proofs
7 of claim for actual damages (i.e. property damage, business losses, economic damages and others
8 losses and expenses) in an amount not less than \$506,030,602.00, plus punitive damages in at
9 least an equal amount.

10 **Reservation of Rights**

11 The TCC seeks approval of a request for a budget for Justice Trotter and Ms. Yanni in the
12 amount of approximately \$22 million through August 2020, comprising certain items, including
13 \$12.5 million for the "fees and expenses of claims processing experts." [Request for Hearing, ¶
14 8.] The TCC states that this funding is necessary for "preparatory work" to be undertaken before
15 the Effective Date of the Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of
16 Reorganization dated March 16, 2020. (the "Proposed Plan") [ECF No. 6320].¹ *Id.*

17 The Adventist Claimants have no objection to Justice Trotter and Ms. Yanni's pre-
18 Effective Date work and preparation related to operation of the trust or the funding thereof by the
19 Debtors. The Adventist Claimants, however, are concerned that the request for such work and a
20 large budget may suggest that the proposed claims resolution procedures may begin to be built-in
21 and made a *fait accompli* before the Court's consideration of objections to the Proposed Plan, and
22 to the proposed Fire Victim Claims Resolution Procedures and the proposed Fire Victim Trust
23 Agreement (together, the "Proposed Claims Resolution Procedures").

24 The Proposed Claims Resolution Procedures as currently described contain certain
25 objectionable provisions and features. If substantial funds are used for "preparatory work"
26 regarding these procedures, the TCC, the Debtors and others may claim and argue at confirmation
27 that it is difficult to change course, that actions have been taken that cannot be undone, that
28

¹ Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Proposed Plan.

1 significant dollars have already been spent on this course, or even that parties somehow have
2 waived their rights in some respect. For instance, the TCC discusses the need to hire employees
3 to “develop and implement the claims evaluation protocols and software developers who will
4 create a customized database.” [Request for Hearing, ¶ 4.] Presumably, these “claims evaluation
5 protocols” and the associated “customized database” need to be developed based on the actual
6 claims evaluation procedures that will be implemented pursuant to the Proposed Claim
7 Resolution Procedures.

8 Some of the objectionable provisions in the Proposed Plan and Proposed Claims
9 Resolution Procedures are evident on the face of the recently filed Disclosure Statement [ECF
10 No. 6353], which describes the procedures regarding the treatment and satisfaction of Fire Victim
11 Claims. Below is sampling of some of these objectionable features:

- 12 • The Disclosure Statement provides that losses “will be calculated, after setting off
13 available insurance policy limits,” regardless of whether those limits were actually
14 collected by the insurers. [ECF No. 6353, at p. 28 (emphasis added).] Distributions for business losses will take into consideration amounts received or
15 potentially recoverable from applicable insurance policies. [*Id.* (emphasis
16 added).] Reducing claims by the amount of “available” insurance limits or
17 “potentially recoverable” insurance amounts is wholly improper. Under the
18 collateral source rule, recoverable damages against the debtor are not reduced by
19 amounts the claimant has been partially or even wholly indemnified for its loss by
20 insurance or another collateral source. Since insurance payments received by the
21 claimant should not be deducted from a claim under the collateral source rule, it
22 would be completely inappropriate to deduct “potential” or “available” insurance
23 where the insurance company has not paid, and may not ever pay. There is
24 absolutely no authority for such a result.
- 25 • The Disclosure Statement provides that holders of large claims might have their
26 claims reduced—not based on their merits—but simply because they are large and
27 might impact what other claimants receive. According to the Disclosure
28 Statement, “special consideration may be given to the treatment of those claims
in the discretion of the Trustee and the Claims Administrator to ensure that all
other claimants receive fair and expeditious compensation.” [ECF No. 6353, at p.
28 (emphasis added).] This statement indicates the Proposed Plan and the
Proposed Claims Resolution Procedures are being set up to deprive certain large
(i.e. business) claimants of their rights to fair, equitable and similar treatment.
This is an astounding position.
- At the same time, and to further exacerbate the problem, *pro rata* treatment of all
Fire Victim Claims is not assured in the Proposed Plan or Proposed Claims
Resolution Procedures. There is no requirement for *pro rata* treatment in the

1 proposed operative documents; nor is there the any disputed claims reserve
2 mechanism, which is in every plan and is geared to ensure *pro rata* treatment. The
3 procedures appear to envision the possibility of unequal treatment depending not
4 only on the type of claimant but also the timing of the claim's determination.

- 5 • Finally, Fire Victims are deprived of the right to have this or any other Court
6 determine their claims. The procedures deny any right to a Court hearing on
7 claims, leaving the matter totally in the "discretion" of the Trustee and Claims
8 Administrator, with limited appeal rights to an in house group of mediators who
9 work for and are part of the Trustee's apparatus of initial claims determination.
10 So, the "neutrals" are reviewing their own collective work and the work of their
11 superior officer.

12 The Adventist Claimants reserve all rights with respect to the issues raised in connection
13 with the Request for Hearing and the related application, as well as all rights to object to the
14 Proposed Plan, including the Fire Victim Claims Procedures and the Fire Victim Trust
15 Agreement.

16 Dated: March 31, 2020

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17 By: /s/ Rebecca J. Winthrop
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